

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA**

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

MFA.No. 879 of 2001(B)

O.P(MV).NO.224/1999 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM

APPELLANT:

**T. RAMACHANDRAN, S/O. GOPALANKUTTY,
AGED 42 YEARS, PUTHUKURUSSE VEEDU,
PULAPATTA POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**

**BY ADV. SRI.O.P.NANDAKUMAR,
ADV. SRI.V.A.AJAI KUMAR.**

RESPONDENTS:

- 1. A.S. BABU, S/O. A.K. SULAIMAN,
ARANGATH HOUSE, POST CHERAYA,
KONGAD, PALAKKAD DISTRICT.**
- 2. IBRAHIM, S/O. ALAVI, AGED ABOUT 29 YEARS,
VAYANIPADAM, UMMANAZHI POST,
PULAPATTA.**
- 3. THE UNITED INDIA INSURANCE COMPANY LTD.,
BRANCH OFFICE, H.B. ROAD, PALAKKAD.**

**BY ADV. SRI.SAJEEV KUMAR K.GOPAL,
SRI.BINOY VASUDEVAN,
SMT.K.C.BEENA.**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J.B. Koshy & K. Hema, JJ.

M.F.A. No. 879 of 2001

Dated this the 30th day of November, 2007

Judgment

Koshy,J.

Appellant sustained serious injuries in a road accident on 18.9.1998 at about 10.00 a.m. He filed an application for compensation of Rs.2,00,000/- before the tribunal alleging that the accident occurred due to the negligent driving of the jeep by the second respondent which was owned by the first respondent and insured by the third respondent as the above jeep hit the autorickshaw in which the appellant was travelling. The tribunal found that the accident occurred due to the negligent driving of the jeep, but, only awarded only a total compensation of Rs.68,877/-. Only the quantum of compensation is disputed in this appeal.

2. Appellant was a tailor. According to him, he was earning Rs.200/- per day and his monthly average income was Rs.6,000/-, but, tribunal has taken only Rs.1,500/-. The accident occurred in 1998. He was aged 40 and was maintaining a family. An unskilled worker in Kerala would have got Rs.100/- per day during 1998. He was a tailor by profession. We are of the opinion

that the tribunal ought to have taken at least Rs.100/- per day as his income in the absence of specific data and he might have got 25 days' work in a month. So, we fix Rs.2,500/- as the monthly income. The appellant was aged 40 years. The apt multiplier is 15 taking guidelines from the second schedule. As per Ext.A5 wound certificate, he sustained the following injuries:

- "1. Contused abrasion (R) upper thigh 5 x 1 c.m.;
2. Lacerated wound 5 x 6 c.m. lower chest - muscle deep;
3. Linear abrasion (R) upper arm;
4. Haemathrosis (R) knee;
5. Compound comminuted trochanteric fracture (R) femur; and
6. Abrasion 5 x 2 c.m. front side of chest."

He was treated as an inpatient for 20 days as can be seen from Ext.A6 discharge summary issued from the Medical College Hospital, Thrissur. Ext.A10 disability certificate was issued by PW2 doctor wherein it was stated that there is shortening of right femur by two inches and limitation of movement of right knee and hip and assessed 24% disability. We are of the view that the above assessment of disability is on the high side considering the injuries

sustained by him. However, we are of the view that he is entitled to compensation for only 12% disability. The certificate itself shows that open reduction and internal fixation ought to have been done, but, because of his diabetes problem he was in plaster cast. The certificate was issued in 1999. According to us, limitation of movement can be overcome by physiotherapy. However, being a tailor, shortening of the leg will certainly affect his earning capacity. Considering the injuries sustained, we are of the opinion that compensation for 12% disability only be granted. If that be so, compensation for disability and loss of earning power will be $\text{Rs.}2,500 \times 12 \times \underline{12} \times 15 = \text{Rs.}54,000/-$. The tribunal has granted

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only Rs.30,000/- under this head and he is entitled to an additional amount of Rs.24,000/-. The tribunal found that he was under treatment and unable to work at least for four months and he was granted Rs.6,000/- towards compensation for actual loss of earning for the above period. Since we have increased the monthly income, towards actual loss of earning for four months, he is entitled to an additional amount of Rs.4,000/-. The tribunal has granted Rs.10,000/- towards injury compensation. The above has to be deducted for calculating compensation for disability and loss of

earning power. So, the appellant will be entitled to an additional amount of Rs.18,000/- over and above the amount decreed by the tribunal. The above Rs.18,000/- should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is disposed of accordingly.

J.B.Koshy
JUDGE

K. Hema
JUDGE

vaa

**J.B. KOSHY AND
K.HEMA,JJ.**

M.F.A. No. 879 of 2001

Judgment

Dated:30th November, 2007